IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI WESTERN DIVISION

Civil Action No. 4806

RISS AND COMPANY, INC., PLAINTIFF,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, DEFENDANTS.

MOTION TO AFFIRM

Appellees, United States of America and Interstate Commerce Commission, pursuant to Rule 12, paragraph 3, of the Revised Rules of the Supreme Court of the United States move that the judgment of the district court be affirmed. This is a direct appeal from the final judgment entered on September 27, 1951, by a specially constituted district court of three judges convened pursuant to Section 2284, Title 28, of the United States Code, dismissing appellant's complaint seeking to set aside two orders of the Interstate Commerce Commission. Appeal was allowed on November 26, 1951, and appeal papers were served on November 28, 1951.

The Commission's orders dated February 3, 1945, and October 4, 1948, directed the issuance of a

certificate of public convenience and necessity to appellant granting it substantial operating authority pursuant to the provisions of the "grandfather clause" of Section 206(a) of the Interstate Commerce Act as amended (49 U.S.C. 306(a), as a common carrier by motor vehicle of general commodities (with specific exceptions not here material) over certain regular routes, and of specified commodities over irregular routes. The Commission denied appellant authority to conduct other operations sought in its application. The tortuous and protracted character of the proceeding to determine appellant's grandfather rights is set forth below.[1]

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[1] The Commission proceedings relating to the issuance of the orders herein sought to be set aside, recorded in Dockets Nos. MC-30077 and MC-200 (Sub. 46), were instituted by Monark Motor Freight System Inc., plaintiff's predecessor in interest, on January 23, 1936, by the filing of its application for operating rights under the "grandfather clause". By this application *Monark* sought a certificate for the carriage of general commodities over routes, to points and within territories in the 19 states of Missouri, Nebraska, Colorado, Texas, Oklahoma, Iowa, Illinois, Indiana, Ohio, Pennsylvania, West Virginia, Maryland, New Jersey, New York, Delaware, Rhode Island, Connecticut, Massachusetts. On March 3, 1938, the Commission issued to appellant a so-called "compliance order" providing for the grant of specific operating rights; thereafter upon the intervention of a large number of protestants the Commission revoked the March 3 order and issued a second "compliance order" on June 13, 1938; on March 20, 1939 the Commission set aside the compliance orders theretofore entered and hearings were begun in June 1939. Approximately, 60 railroads and truck lines entered their appearance and participated actively in such hearings. An examiner's proposed report and order was issued on February 13, 1940, but upon the request of the appellant additional hearings were held, and a second examiner's proposed report and order was entered on January 14, 1943. (At or

The instant action came on for hearing together with another action involving other orders granting additional rights sought by appellant under the "grandfather clause" (Civil Action No. 497), before the three-judge district court in April of 1950. The orders involved in both actions were unanimously sustained in a comprehensive opinion rendered by the court on Setpember 27, 1951.

Appellant contends generally that the Commission's grant of rights less than those claimed is unsupported by or contrary to the evidence of record, not supported by adequate findings, and contrary to the spirit and intent of governing statutes. More specifically, appellant contends: (1) Since the Commission made no specific finding as to

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about this stage of the proceedings appellant acquired control of all of the outstanding capital stock, operating rights and property of *Monark* pursuant to the Commission's orders entered March 13, 1942 and September 28, 1942.) On February 3, 1945 Division 5 of the Commission issued a report and order granting appellant substantial operating authority, but denying it among other things the right to operate over nine (9) route-segments forming portions of, or intersecting, routes granted to the appellant. On March 16, 1945, appellant filed a petition for reconsideration of the Commission's order insofar as it related to the denial of the so-called nine (9) route segments; said petition was denied by the Commission on August 14, 1945 and plaintiff thereupon filed suit in the district court seeking to set aside and enjoin the 1945 order of division insofar as such authority was concerned. On November 12, 1945 a three-judge district court issued an order staying temporarily that portion of the 1945 order sought to be reviewed by plaintiff and on December 3, 1945 the Commission on its own motion entered an order setting aside such portion of its order and reopening that issue for reconsideration. As a result of the Commission action the litigation was dismissed by plaintiff. (On or about the date of the 1945 order the Commission on its own motion initiated a completely separate proceeding to investigate the status of

the grant or denial of one route, the court erred in not remanding the entire proceeding to the Commission; (2) the Commission's order contains only general, indefinite findings and its specific findings are at variance with the facts of record or are incomplete; (3) the district court in affirming the Commission's order, did not properly perform the task of judicial review; (4) the district court misinterpreted the factors which the Commission may consider in determining "grandfather" applications.

The assignment of errors and jurisdictional statement show that the appeal actually raises only the general questions usually presented in cases arising under the "grandfather clause." The pro-

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plaintiff as a "common carrier by motor vehicle". The merits of the issue involved in the investigation of plaintiff's so-called "provider plan" of operation have no relevancy to the matters involved in this appeal and no discussion of the reports and orders of the Commission issued in connection with such proceedings need be presented.) Subsequent to the issuance of the 1945 report and order of Division 5, and the reopening of the proceedings for reconsideration by the entire Commission only as to the denial of the so-called segments issue, no action with respect to other findings and conclusions set out in the 1945 report and order was undertaken by appellant until long after the expiration of the time usually permitted by the Commission's rules of practice, when on May 9, 1946 plaintiff filed with the Commission a request for leave to file a petition for reconsideration addressed to all orders in this and other proceedings. Permission to file this petition was granted by Commission on July 23, 1946. Such a petition was filed by plaintiff on October 11, 1946, and on July 8, 1947, the Commission denied the relief therein requested. On October 4, 1948, the Commission issued its report and order on reconsideration on the so-called segments issue. This proceeding was then filed by appellant seeking to enjoin the orders of February 3, 1945, and October 4, 1948.

ceedings before the Commission on such applications primarily require only the submission of proof of bona fide services prior to and subsequent to the crucial date of June 1, 1935, provided in the act.[2] The issue customarily presented on judicial review of such proceedings is whether the findings of the Commission in regard to past bona fide operations are supported by the evidence of record. Here both the action of the Commission and decision of the district court are in full accord with the principles laid down by ths Court in similar cases. We submit, therefore, that the appeal presents no substantial question.

We shall not attempt to reproduce the details of the Commission's discussion, findings and conclusions with respect to the countless factual issues it was required to resolve in determining appellant's claims of "grandfather" rights. The Commission's 1945 report covers some 150 printed pages. The operating rights which the Commission has granted to it are of very wide scope. As the district court noted, appellant "is engaged in an extensive and complex operation covering routes extending in more than 20 states from the Rocky Mountains on the west, to the Atlantic Coast on the east, from Massachusetts on the north, to Oklahoma on the south."

The character of the Commission's consideration

[2] The provisions of Sections 206(a) of the Act are set forth in the Appendix to appellant's Statement as to Jurisdiction.

and rulings is indicated by the following description of the Commission's order of February 3, 1945, in appellant's jurisdictional statement:

> The order discusses each of the claimed regular routes and the showing of service to the intermediate and off-route points located on or near such routes. As to these routes and points, the order contains initial and preliminary findings of facts, in the form of a listing of shipments to and from the various intermediate and off-route points. * * *
>
> Following the listing of shipments disclosed by the documentary evidence to have been carried to and from the various points, the order contains a discussion relating to the service on each claimed regular route. Within this discussion will be found the basic findings by which the grant or denial of authority to serve such points is predicated.

Thus appellant's own statement shows that the Commission (1) considered the claims made by appellant, (2) discussed the evidentiary support applicable to the routes and points of service involved, (3) made initial and preliminary findings of facts relative to such routes and points of service, and (4) made the basic findings granting or denying service over such routes or to such points.

The district court quoted the following from the Commission's report of October 4, 1948:

> Each of the route segments will be discussed separately. In arriving at our conclusions as

> to whether or not applicant is entitled to "grandfather" rights with respect to the route segments, we shall consider all shipments which might reasonably have moved over the segment in question. In other words, if the particular route segment would constitute part of the natural arteries of travel between points actually served on since the statutory date and there is some evidence that the route segment actually was used, appropriate authority will be granted to continue operations over such route segment.

The district court, after setting forth this quotation, stated:

> We think it is not necessary to repeat what the Commission has said in its order of October 4, 1948, relative to each of the routes in controversy, but in accordance with its statement above quoted, the Commission apparently reviewed very carefully the evidence with respect to all of the 9 route segments in controversy, discussed the evidence as to the time and nature of the service shown to have been rendered by the plaintiff over said routes and to the intermediate and off-route points, and based its findings and conclusions upon such evidence.

The district court's opinion sets forth as an illustration the Commission's findings and conclusions with respect to one of the route segment issues, and said that it was "typical of the Commission's apparent close consideration of the evi-

dence of all of the routes, segments of routes, intermediate and off-route points, which are the subject of the controversy." The district court further states:

> If the report of the Commission is carefully read, one cannot escape the conclusion that the Commission considered very thoroughly all of the evidence with respect to Monark's services over the disputed routes prior to the critical period and made its findings and conclusions with respect thereto.

Appellant complains because the Commission, in dealing with the many factual issues, before it, did not pin-point the precise ground for some of its findings. The district court noted that while the Commission did not make a finding with respect to each and every exhibit and the testimony of each and every witness, it made findings on the over-all weight of the evidence relating to the particular routes or particular towns sought to be served. The court said that unless the Commission is requested to make specific findings as to particular issues or evidence, its basic or essential findings, if supported by the evidence, are sufficient to uphold its order. And the court concluded that the Commission's findings had substantial evidentiary support.

Appellant in its jurisdictional statement asserts that the United States and the Commission con-

ceded in the district court that "much of the evidence had been disregarded by the Commission and that this ignored evidence * * * was of exactly the same weight and character as the evidence considered by the Commission." This statement has a breadth which, we think, is misleading. What was conceded was merely that there were some inaccuracies in the Commission's evidentiary findings as to the number of past shipments, during a part of the relevant period, to particular points. The position of the present appellees was that these inaccuracies, relating only to a part of the period as to which appellant had to establish bona fide operation, were immaterial because other findings correctly reflecting the evidence established lack of bona fide operation to these points as to part of the critical period.

We submit, therefore, that the appeal presents no substantial question as to the adequacy of the Commission's findings or the judicial review thereof by the district court.

Appellant also contends that the district court erred in not remanding the proceeding to the Commission in view of the Commission's failure to make findings relative to appellant's claimed right to operate over an alternate route via U. S. Highway No. 1 between New Haven, Connecticut and Boston, Massachusetts. But appellant's petition for reconsideration by the entire Commission did not re-

quest any ruling, or object to any lack of finding, as to this route. The district court therefore properly held that appellant, not having exhausted its administrative remedy in this respect, was not in a position to obtain judicial review of the matter. The court said:

> As we have stated with respect to the same question heretofore determined in regard to Case No. 4974,[3] we are unable to determine whether or not the Commission failed to take into consideration the evidence in relation to this route, and if so, whether or not the evidence was sufficient to sustain its view, or whether or not its actions were arbitrary and capricious. We think the plaintiff should call the Commission's attention specifically to this particular phase of the case so that it may correct the error, if there is an error, and if not, it may make the proper finding upon which to base a judicial review. As the situation stands, the question is not yet ripe for judicial review.

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[3] The effect of appellant's failure to include in its petition for Commission reconsideration matters subsequently urged as error in the district court proceeding was dealt with at some length in the portion of the district court's opinion dealing with Case No. 4974. This part of the opinion has been omitted from the copy of the court's opinion attached to the appellant's jurisdictional statement. We have set forth in the Appendix to this motion a copy of the omitted portion of the court's opinion dealing with the effect of lack of specification of particular error, in the petition for reconsideration filed by the Commission.

Appellant's remaining point is that the district court erroneously stated that the Commission, in determining operating rights claimed under Section 206(a) of the Interstate Commerce Act, must take into consideration rights which had been granted to other carriers. Even if this statement is assumed to be erroneous, it is not ground for reversal. The issue is the validity of the Commission's determination. But appellant does not contend, nor would the record support the contention, that the Commission, in ruling upon appellant's rights, gave consideration to the operating rights of other carriers.

The district court's statement was made with reference to appellant's contention that, when the Commission found that it was entitled to operate to and from certain cities, the Commission should have found that the area which it had the right to serve was not confined to the cities' municipal limits but included their respective commercial zones. The district court said that appellant had not cited any specific definition of the phrase "commercial zone"; that the Commission's judgment, because of its vast experience in resolving such questions, should be accepted unless clearly unreasonable; that the Commission, in determining the area as to which there had been prior "bona fide operation," must decide many questions of fact which the court is not empowered to deter-

mine; and that the Commission must take into consideration the operating rights granted to other carriers. We submit that the latter statement, in its context, is simply a recognition of the informed judgment which the Commission was in a position to exercise after having passed upon similar questions as to the scope of the area of service when ruling upon operating rights claimed by other carriers.

The Commission's report and the district court's decision clearly show that the Commission applied the proper test of substantiality of service in determining the scope of appellant's bona fide operations as a common carrier by motor vehicle during and subsequent to the "grandfather" period, as approved by this Court in *United States* v. *Carolina Carriers Corporation*, 315 U. S. 475. See also, *Howard Hall Co.* v. *United States*, 315 U. S. 495, 498-499. In the *Carolina Carriers* case the Court said (480-481):

> The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission. *Alton R. Co.* v. *United States*, *ante*, p. 15. The Act provides the test of "bona fide operation." That standard carries the connotation of substantiality. It also makes clear that a holding out to serve a specified area is not alone sufficient. It is "actual rather than potential or simulated service" which is required. *McDonald* v. *Thompson*, 305 U. S.

> 263, 266. Substantial, as distinguished from incidental, sporadic, or infrequent, service is required. Substantial service actually rendered may have been confined to narrow limits. *Loving* v. *United States*, 32 F. Supp. 464, aff'd. 310 U. S. 609. Ability to render the service throughout the wide reaches of the territory, which the applicant professed to be willing to serve, may not have existed.

The Court in that case also said (p. 486) that "an applicant's status may vary from one part of the territory to another or be different in northbound shipments than in southbound shipments."

When such tests and standards have been applied by the Commission, this Court has consistently granted summary affirmance of Commission orders imposing commodity and territoral limitations on operating rights sought by motor carriers under the "grandfather clause." *Miami Transportation Company, Inc.* v. *United States*, aff'd. *per curiam*, 332 U. S. 803; *W. H. Tompkins Company* v. *United States*, aff'd. *per curiam*, 329 U. S. 683; *Deaton Truck Lines, Inc.* v. *United States*, aff'd. *per curiam*, 326 U. S. 680; *Jack Cole Company, Inc.* v. *United States*, 59 F. Supp. 10, aff'd. *per curiam*, 324 U. S. 822; and *The Pyramid Moving Company* v. *United States*, 57 F. Supp. 278, aff'd. *per curiam*, 322 U. S. 715.

For the foregoing reasons it is clear that this appeal presents no substantial question. It is,

therefore, respectfully submitted that the judgment of the District Court should be affirmed.

PHILIP B. PERLMAN,
Solicitor General.
DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.

DECEMBER, 1951.

I certify that a copy of the foregoing Motion to Affirm was served upon counsel for all parties of record by mail this 12th day of December, 1951.

WILLIAM J. HICKEY,
Special Assistant to the Attorney General.

APPENDIX

EXCERPTS FROM DISTRICT COURT'S OPINION IN CIVIL ACTION NO. 4974, HEARD AND DETERMINED CONTEMPORANEOUSLY WITH THE PRESENT CASE.

The order of November 12, 1940 was an order disposing of all parts of the applications of Riss & Co., and Illmo. At any time subsequent to 30 days thereafter, a suit might have been brought in the United States District Court seeking to enjoin the Commission's orders. However, under the aforesaid rule, there is an exception which apparently authorizes the Commission to grant leave to file such a petition for reconsideration after the limitation period provided in the rule.

Upon disposition by the Commission of such a delayed or belated petition, filed pursuant to leave, an action for the review of the Commission's order would lie under the section of the Transportation Act above cited. There is no limitation upon the time when a petition for reconsideration may be filed by leave of the Commission. Thus it would seem that no action of the Commission on any matter of denial ever becomes final, and may always be subject to review of the court, in the event the Commission grants leave to file a petition for reconsideration, and thereafter overrules it for any cause.

However, the mere fact that the court may have jurisdiction by reason of the Commission's action in overruling a petition for reconsideration does not necessarily mean that the court is compelled to review the proceedings and the evidence, and is precluded from determining that the plaintiff has failed to exhaust its administrative remedies. It

may be that the plaintiff failed to properly present the matters complained of to the Commission, in order that the Commission might correct any error, oversight or failure to consider some particular bit of evidence respecting some specially designated question. This reasoning we think, should apply to the discrepancy between the Division's order and the certificate. If there was an error, the Commission's attention should have been specifically and definitely called to it.

* * *

The Petition for Reconsideration filed on October 11, 1946 sought a rehearing of all the applications MC-200 to MC-200 (Sub. No. 46), to the grandfather rights of plaintiff, and not to correct an error in the certificate. The Commission has the authority to correct its errors, if there were errors. We cannot say whether there were or not until the Commission has determined that question. If there were no errors, then a finding and conclusion of the Commission should be requested by the plaintiff so that a court may determine whether or not the difference between the Commission's order describing the routes to be served by the plaintiff and the routes described in the certificate, was based upon substantial evidence, or was arbitrary and capricious.

The Petition for Reconsideration, which did not specifically call the discrepancy to the attention of the Commission, was overruled *without* opinion or comment. Until that issue is determined by the Commission, the court cannot determine whether the Commission's action is sustained by substantial evidence or is arbitrary or capricious. The

question is therefore not yet ripe for judicial review.

We next come to the question of the segments of routes serving Wichita Falls, Fort Worth and Dallas, Texas, and Salt Lake City and Ogden, Utah. The Government makes the same contention to this issue as to the one just determined . . . that the plaintiff has not exhausted its administrative remedies, and therefore this court is without jurisdiction to determine the question. In this connection we think the question is distinguishable from that just discussed, and that the Government is in error.

The petition of October 11, 1946 requested reconsideration of all the grandfather rights sought in all its applications, and which had been denied. Although plaintiff had apparently acquiesced in the order of the Commission granting the certificate of December 30, 1941 until the filing of its application to file a petition for reconsideration in 1946, the application was nevertheless granted, and the petition was filed and subsequently denied. No additional testimony was offered, and the denial was without opinion.

While the Government's contention may to some extent be correct in that the plaintiff did not, in its Petition for Reconsideration call the Commission's attention to its failure to give proper consideration to the evidence, and to make definite findings as to specific questions, it would seem that the statutory requirement for review has been met. But, in the court's determination of the plaintiff's contention as to whether or not the orders of the Commission were arbitrary, capricious and in opposition to the evidence in the record, we think

the court may take into consideration the state of mind of the plaintiff over the period of five years, during which time it apparently acquiesced in the findings and conclusions and orders of the commission, and so far as the record is concerned, made no attempt to have it set aside.

* * *

In view of what we have heretofore said, we are not willing to sustain the defendants' contention. However, the long period of acquiescence without official complaint, its positive statements respecting the order above quoted, is most persuasive that plaintiff did not feel that the Commission's findings and orders were unsupported by substantial evidence, and were arbitrary and capricious. We think it was a question entirely within the jurisdiction of the Commission to determine—and we cannot say that its findings and conclusions and orders were unsupported by substantial evidence, and were arbitrary and capricious.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 541

RISS AND COMPANY, INC.,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

MOTION OF INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC., ET AL., TO AFFIRM

JOHN R. NORRIS,
JAMES J. DOHERTY,
Counsel for Appellees,
Interstate Common Carrier
Council of Maryland, Inc., et al.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

CIVIL ACTION NO. 4806

RISS AND COMPANY, INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,

Defendants;

INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, INC., JOINT NORTHEASTERN MOTOR CARRIER ASSOCIATION, INC. AND CONTINENTAL TRANSPORTATION LINES, INC., ET AL.,

Intervenors

MOTION TO AFFIRM

Intervenors, Interstate Common Carrier Council of Maryland, Inc. and Joint Northeastern Motor Carrier Association, Inc., comprise in their total membership 93 common carriers by motor vehicle operating under authority of the Interstate Commerce Commission within the area affected by the instant proceeding. Similarly Continental Transportation Lines, Inc. is a common carrier by motor vehicle operating by virtue of authority issued to it by the Commission, and this carrier also operates within this affected area. These two associations of motor carriers and this

individual motor carrier participated in all proceedings had before the Commission and before the United States District Court for the Western District of Missouri, Western Division, in support of the orders of the Commission which are under attack herein.

Intervenors, in accordance with Rule 12, Paragraph 3 of the Revised Rules of the Supreme Court of the United States, move that the judgment and decree, entered in the within action on September 27, 1951 by a specially constituted United States District Court of Three Judges, be affirmed. This final judgment and decree dismissed Appellant's complaint seeking to set aside two orders of the Commission dated February 3, 1945 and October 4, 1948. On November 23, 1951, the United States District Court granted Defendants' and Intervenors' motion to strike Plaintiff's motion for a new trial, and on the same date denied Plaintiff's motion for an injunction pending appeal. Appeal was allowed on November 26, 1951.

The two orders of the Commission, heretofore referred to, granted to Appellant substantial operating authority as a result of an application filed by Appellant's predecessor in interest, Monark Motor Freight System, Inc., under the provisions of the "grandfather clause" of Section 206(a) of the Interstate Commerce Act, as amended (49 U. S. C. 306(a)). These two orders of the Commission permitted Appellant to continue operations as a common carrier by motor vehicle of general commodities, with certain exceptions, over a great number of specified regular routes, and of specified commodities within an extensive irregular route territory, and denied to Appellant authority to conduct operations over certain other claimed regular routes and within certain other claimed irregular route territory.

The Court's attention is respectfully called to the fact that the Certificate of Public Convenience and Necessity issued to Appellant on February 21, 1951, covering the

authority granted, is reproduced in the Appendix to the Motion to Affirm filed on behalf of the United States of America and the Interstate Commerce Commission. The Court's attention is further called to the summary of the various proceedings had before the Commission and the United States District Court with respect to the above "grandfather" application, said summary appearing as Footnote 2 on Page 1 of the said Motion to Affirm. Intervenors respectfully adopt the aforesaid Appendix and Statement of Proceedings as a correct and accurate statement of Appellant's operating authority as prescribed by the Commission, and of all actions had before the Commission and the United States District Court concerning this application.

Briefly stated, Appellant's contentions on appeal are as follows: (1) the Commission's denial of certain claimed "grandfather" authority is unsupported by or contrary to the evidence of record, is not supported by adequate findings, and is contrary to the spirit and intent of the Interstate Commerce Act; (2) the United States District Court erred in that it failed to remand the entire proceeding to the Commission because the Court had held, in its opinion, that no specific finding had been made as to the grant or denial of a single short route included in an application covering practically every town and city in the Central United States, Middle Atlantic and New England areas; (3) the orders of the Commission contain only general, indefinite and inadequate findings which are in variance with the facts of record; (4) the United States District Court's judgment sustaining the Commission's order is not supported by the evidence of record; and (5) the United States District Court misconceived the statutory function of the Commission in its determination of "grandfather" applications.

A careful analysis of Appellant's Assignment of Errors and Statement as to Jurisdiction reveals conclusively that the only issues raised by the instant appeal are those issues which normally arise when an applicant for "grandfather" authority seeks judicial review of a Commission determination of such application. Furthermore, a careful analysis of the United States District Court's entire opinion demonstrates that this Court fully understood the principles of law applicable to such actions and, after eighteen months of careful study of the massive record before it, correctly applied these principles in reaching its conclusions.

The only real issue raised by the complaint filed with the United States District Court and by this appeal is whether or not the findings of the Commission, relative to bona fide operations prior and subsequent to June 1, 1935 by Appellant and its predecessor in interest, are supported by the evidence of record. The United States District Court determined that the findings were so supported and, in doing so, adopted the correct principles of law as laid down by this Court in frequent decisions, particularly in *U. S.* v. *Carolina Carriers Corporation*, 315 U. S. 475, wherein it was stated at pages 480-481:

> The precise delineation of the area or the specification of localities which may be serviced has been entrusted by the Congress to the Commission . . . The Act provides the test of "bona fide operation". That standard carries the connotation of substantiality. It also makes clear that a holding out to serve a specified area is not alone sufficient. It is "actual rather than potential or simulated service" which is required. *McDonald* v. *Thompson*, 305 U. S. 263, 266. Substantial, as distinguished from incidental, sporadic, or infrequent, service is required. Substantial service actually rendered may have been confined to narrow limits. *Loving* v. *United States*, 32 F. Supp. 464, aff'd 310 U. S. 609. *Ability to render the service throughout the*

> *wide reaches of the territory*, which the applicant professed to be willing to serve, *may not have existed.*
>
> * * * * * * *
>
> . . . *While service to and from all points in the States included in the application was not allowed, the reduction was determined by the standard of substantiality of service.* . . . (Italics supplied.)

(and at pages 483, 486):

> It is plain that a carrier's holding out and actual performance may be limited to a few articles only. That is to say, he may be a common carrier only of a restricted number of commodities. . . . Or the service actually rendered may have been confined to such a few commodities that his holding out or willingness to carry a much larger class may be disregarded.
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> * * * * * * *
>
> . . . an applicant's status may vary from one part of the territory to another or be different in northbound shipments than in southbound shipments.

This Court has repeatedly upheld the principles laid down in its decision in the *Carolina Carriers Corporation* case by summary affirmance of Commission orders imposing commodity and territorial limitations on operating rights sought by motor carriers under the "grandfather clause" when such tests and standards were applied and used by the Commission in reaching its determination as is the situation in this proceeding. *Miami Transportation Company, Inc.* v. *United States*, aff'd *per curiam*, 332 U. S. 803; *W. H. Tompkins Company* v. *United States*, aff'd *per curiam*, 329 U. S. 683; *Deaton Truck Lines, Inc.* v. *United States*, aff'd *per curiam*, 326 U. S. 680; *Jack Cole Company, Inc.* v. *United States*, 59 F. Supp. 10, aff'd *per curiam*, 324 U. S. 822; and *The Pyramid Moving Company* v. *United States*, 57 F. Supp. 278, aff'd *per curiam*, 322 U. S. 715.

Appellant's attempt to misconstrue the principles which were followed by the United States District Court in reaching its determination of the proceeding before it by the quotation of sentences out of context and by the raising of issues as to which it had never requested a determination by the Commission, is complete substantiation of Intervenors' contention that the issues raised by this appeal are not substantial legal issues which require determination by this Court but are simple factual issues which have long since been correctly decided by the Commission.

For the foregoing reasons it is obvious that this appeal presents no substantial question. It is, therefore, respectfully submitted that the judgment of the United States District Court should be affirmed.

JOHN R. NORRIS,
JAMES J. DOHERTY,
Attorneys for Intervenors.

December 11, 1951.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 541

RISS & CO., INC.,

Appellant,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

MOTION OF SPECTOR MOTOR SERVICE, INC., TO AFFIRM

CARL L. STEINER,
Counsel for Appellee,
Spector Motor Service, Inc.

AXELROD, GOODMAN & STEINER,
Of Counsel.

IN THE DISTRICT COURT OF THE UNITED STATES
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

Civil Action No. 4806

RISS & CO., INC.,

Plaintiff,

vs.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, INTERSTATE COMMON CARRIER COUNSEL OF MARYLAND, INC., ET AL., AND SPECTOR MOTOR SERVICE, INC.,

Defendants

MOTION OF INTERVENER, SPECTOR MOTOR SERVICE, INC., TO AFFIRM

Intervener, Spector Motor Service, Inc., is a common carrier by motor vehicle, operating by virtue of authority issued to it by the Interstate Commerce Commission in Docket No. MC-69116, and operates in interstate commerce in many of the various states affected in this proceeding, and particularly in the State of Connecticut. Spector Motor Service, Inc. participated in the original proceedings before the Interstate Commerce Commission and was a party of record in the United States District Court, for the Western Division of Missouri, Western Division, in support of the orders of the Interstate Commerce Commission, which are the subject matter of the appellant's appeal.

Pursuant to Rule 12, Paragraph 3, of the revised rules of the Supreme Court of the United States, Spector Motor

Service, Inc. moves that the judgment and decree of the District Court, entered in the above entitled cause on September 27, 1951, be affirmed. By this judgment and decree the District Court dismissed appellant's complaint, which sought to set aside two orders of the Commission, dated February 3, 1945, and October 4, 1948, respectively. Subsequent to the issuance of this judgment and decree, appellant filed motions for a new trial and for an injunction pending appeal. The defendants and interveners filed a motion to strike appellant's motion for a new trial. On November 3, 1951, the District Court granted defendants' and interveners' motion to strike the motion for a new trial and denied appellant's motion for injunction pending appeal. On November 26, 1951, appeal was allowed.

The orders of the Commission dated February 3, 1945, and October 4, 1948, granted certain operating authority to appellant, and at the same time denied other claimed operating authority to appellant. On February 21, 1950, the Interstate Commerce Commission issued a certificate of public convenience and necessity to appellant. This certificate set forth all of the operating authority granted to appellant. For ready reference, the certificate has been set forth in its entirety in the appendix to the motion to affirm filed on behalf of the United States of America and the Interstate Commerce Commission. At the same time, these defendants have also compiled a summary of all of the proceedings before the Commission and the District Court, with respect to the proceedings, prior to the action in the District Court and including all of the proceedings in the District Court. This summary appears as Footnote 2 on Page 1 of their motion to affirm, and this intervener respectfully begs to adopt the aforementioned appendix and statement of proceedings as a true and correct statement of the operating authority granted to appellant by the Commission and of all

of the actions concerning this application, both before the Commission and the District Court.

Appellant has set forth eleven assignments of error in support of its appeal. In short, it is the contention of the appellant that (a) the District Court found that the orders of the Commission were supported by substantial evidence, and (b) conversely, that the Court erred in finding that the orders of the Commission were supported by evidence. There is nothing new, novel, or different in the contentions of the appellant. It is respectfully submitted that the District Court, in its lengthy, well-considered, and well-written opinion, carefully analyzed the massive record, and, after taking eighteen months of careful study, correctly arrived at a proper legal conclusion.

There was only one issue before the District Court, and there is only one issue at the present time. The issue is a simple one. Are the findings of the Interstate Commerce Commission in its orders of February 3, 1945, and October 4, 1948, supported by the evidence of record? It is respectfully submitted that the District Court, after prolonged study and painstaking analysis, correctly determined that the answer to the foregoing question was in the affirmative.

The present issue has been determined by the United States Supreme Court, various Circuit Courts of Appeal, and many Statutory Three-Judge Courts, many times. The authorities are numerous. We will not at this time, however, cite all of them. The foremost case which has enunciated these principles is *U. S.* v. *Carolina Carriers Corp.*, 315 U. S. 475. The principles laid down in this case have been upheld repeatedly. Other cases affirming the principles laid down in the Carolina case are *Miami Transportation Company, Inc.* v. *United States*, aff'd. *per curiam*, 332 U. S. 803; *W. H. Tompkins Company* v. *United States*, aff'd. *per curiam*, 329 U. S. 683; *Deaton Truck Lines, Inc.* v. *United States*, aff'd. *per curiam*, 326 U. S. 680; *Jack Cole Company, Inc.* v. *United*

States, 59 F. Supp. 10, aff'd. *per curiam*, 324 U. S. 822; and *The Pyramid Moving Company* v. *United States*, 57 F. Supp. 278, aff'd. *per curiam*, 322 U. S. 715.

It is respectfully submitted that the judgment of the United States District Court should be affirmed, for the reason that this appeal presents no substantial question.

CARL L. STEINER,
Attorney for Intervener,
Spector Motor Service, Inc.

AXELROD, GOODMAN & STEINER,
Of Counsel,
39 South LaSalle Street,
Chicago, Illinois.

Dated: December 13, 1951.

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CHARLES ELMORE CROP
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Supreme Court of the United States

October Term, 1951.

No. 541

Riss & Company, Inc., a Corporation, *Appellant*,

vs.

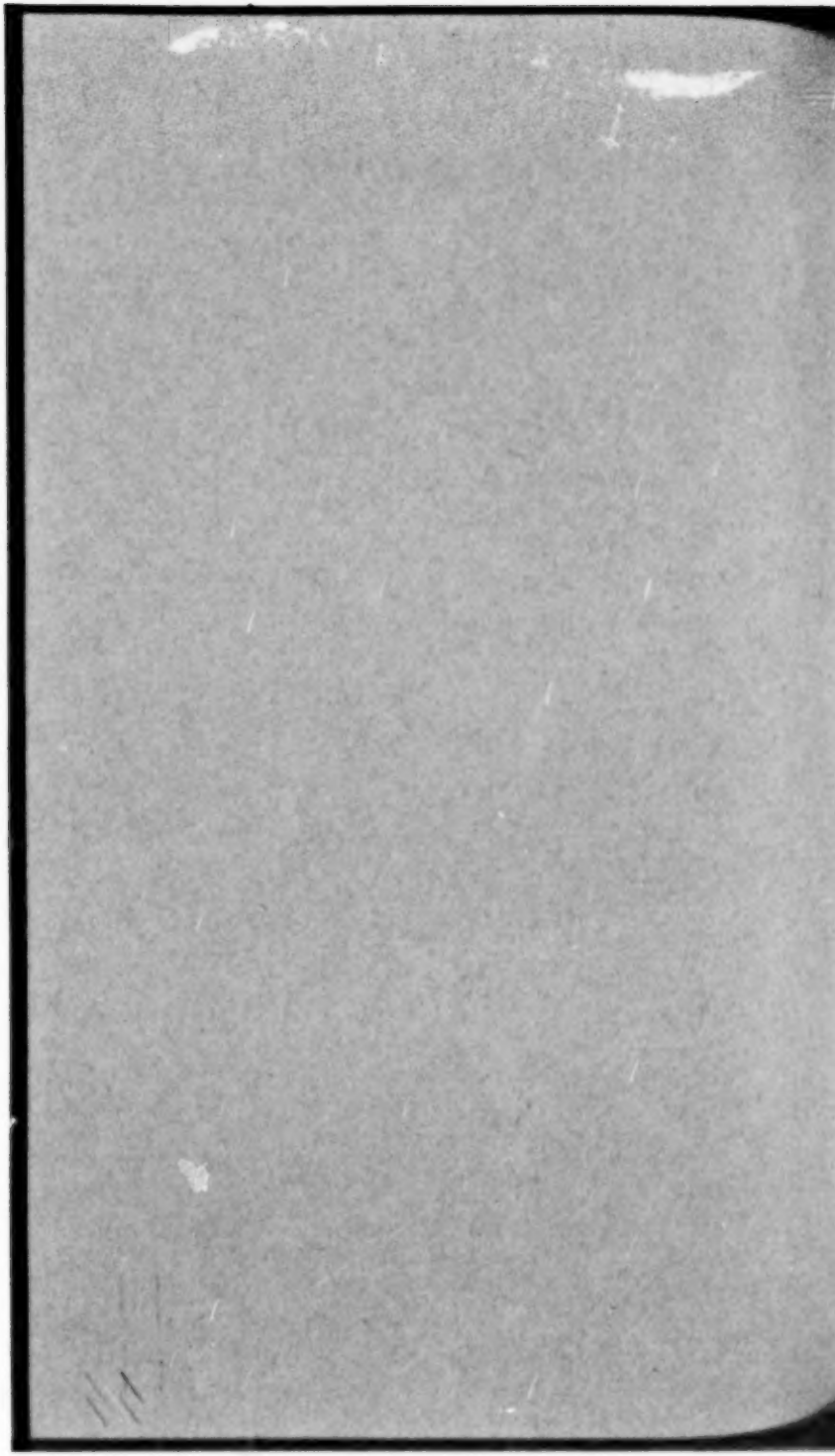
The United States of America and Interstate Commerce Commission, *Appellees*,
Spector Motor Service, Inc., and Interstate Common Carrier Council of Maryland, *Intervenors-Appellees*.

On Appeal from the United States District Court for the Western District of Missouri.

BRIEF OF RISS & COMPANY, INC., IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM.

John B. Gage,
Wendell Berge,
A. Alvis Layne, Jr.,
Attorneys for Appellant.

SMITH-GROVER, LAW PRINTERS, KANSAS CITY, MO



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Supreme Court of the United States

October Term, 1951.

No. .....

RISS & COMPANY, INC., a Corporation, *Appellant*,

vs.

THE UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, *Appellees*,
SPECTOR MOTOR SERVICE, INC., and INTERSTATE COMMON CARRIER COUNCIL OF MARYLAND, *Intervenors-Appellees*.

On Appeal from the United States District Court for the Western District of Missouri.

BRIEF OF RISS & COMPANY, INC., IN OPPOSITION TO APPELLEES' MOTION TO AFFIRM.

Pursuant to Rule 12, Paragraph 3, and Rule 7, Paragraph 3, of the Revised Rules of the Supreme Court of the United States, appellant, Riss & Company, Inc., respectfully presents its brief opposing appellees' motion to affirm the judgment of the three-judge district court entered on September 27, 1951. The appeal from this judgment was allowed on November 26, 1951, and appellees' motions to affirm were filed on December 13, 1951.

I.

The Questions Presented Are Substantial.

Appellees' motions erroneously state that the appeal presents no substanial questions in view of the fact that it raises "only the general questions usually presented

in cases arising under the 'grandfather clause.'" The motions describe the issue presented as confined to the determination of the question as to whether or not the findings of the Interstate Commerce Commission are supported by evidence on the record considered as a whole. This is not an accurate or correct statement. It is apparent from the jurisdictional statement and the assignment of errors that, while the question of the evidentiary support of the challenged order was and is one of the important issues in the case, it is by no means the only or even the most substantial issue presented. The primary issue presented is whether or not ultimate findings or conclusions, indefinite and general in character and couched in the language of the Motor Carrier's Act, can be allowed to stand when such findings are premised upon precedent evidentiary findings that are concededly erroneous and admittedly in conflict with the whole of the evidence. The other questions presented include that based upon the absence of findings, the question raised by the failure of the district court to adhere to applicable standard of judicial review and the question arising from the district court's erroneous application and statement of the law respecting the denial of authority to appellant to serve the Commercial Zones of important cities. These issues are clearly of general and substantial importance.

Thus, a very serious question of law relating to judicial review of administrative process is posed by the statement in the opinion that the failure of the Commission to make any findings supporting its denial of authority to use a certain claimed route (U. S. Highway No. 1 between New Haven, Conn., and Boston, Mass.) presents a question "not ripe for judicial review" and that judicial relief from the final order of denial should be refused. Where the Commission has made no finding respecting

this important claimed right and the district court fails to remand the proceeding for appropriate action it is manifest that the general application of the express statutory reservation of the right to operate in accordance with all claimed rights while there is pending a proceeding to establish "grandfather rights" is thus effectively obliterated from the Motor Carrier's Act. The theory of the district court that the absence of findings in an order does not authorize action by the reviewing court thus results in nullification of one of the basic provisions of the act.

In sustaining the denials of authority to serve the Commercial Zones (as established by the Commission in general orders) surrounding a number of important terminal cities, the holding of the district court that the Commission "must take into consideration certificates and rights which have been granted to other carriers" in a "grandfather rights" case, upon the face of the opinion raises a very important issue of law. Moreover, the refusal of the district court to adhere to applicable standards of judicial review presents an issue manifestly of the utmost importance and substance, involving, as it does, problems basic to the administrative process and the effect of administrative action upon the individual rights.

It is therefore wholly unrealistic to attempt to reduce the issues in this case to the relatively simple issue of whether or not there is substantial support in the record for the findings made. The principal issue presented becomes important and takes on its true character by reason of the fact that the initial findings of fact are admittedly in error. This issue is one that relates to the character of the order and the nature of the consideration given the evidence rather than the question as to whether or not there was in the record any evidence to support the conclusions reached. Had the Commission actually considered,

or from the terms of the order could be assumed to have considered, *all* the evidence of record and then denied appellant certain operating rights, the problem would be, as appellees state, one of determining whether substantial evidence supported the conclusions reached. But that is not the issue here. Where concededly and by express statements in the order weighed in the light of the evidence, much of the competent and relevant evidence was ignored, the reviewing court in order to support the Commission's order must assume the role of the agency and attempt to decide that, considering *all* the evidence, the administrative decision would again be the same. This a court may not do without usurping administrative power. The Commission alone, by reason of its expertise, is qualified to answer such questions. Moreover, where the ultimate findings are so general that it is impossible to know the real basis for the denial of the right to operate to and from a particular point, the reviewing court cannot adequately decide whether or not there is substantial evidentiary support for the denials.

Appellees' motion to affirm effectively brings out this precise point. Appellees admit that it was conceded in the district court that the Commission's evidentiary findings respecting the shipments to and from numerous points on the authorized regularly served routes were inaccurate and in many instances failed to reflect pertinent and uncontradicted evidence. Appellees then argue that such disregard of evidence was immaterial in view of the fact that other general findings which were in the nature of conclusions of fact, correctly reflecting the evidence, established lack of bona fide operation to these points. It is contended that the same conclusions would have been reached had the evidentiary findings been correctly and fairly made. This clearly illustrates the inade-

quacy of the findings. In the first place, appellant is unable to discover general findings "correctly reflecting the evidence" or correcting any of the many errors in the evidentiary findings, and secondly, it is plainly impossible for appellant or the reviewing court or the appellees to determine the basis upon which the denial as to any particular intermediate point was predicated in view of the indefinite and general nature of the findings or conclusions. Thus the appellees may say, as they do, that notwithstanding that the Commission may have erred in stating that there had been no shipments to or from a particular intermediate point prior to the critical date, its denial was still correct inasmuch as the denial may be supported by applying a different or another test of bona fide operation, such as sufficient continuity of service *after* the critical date.[1] In order for appellant to show that the basis for such denials was erroneous or false, it must, in advance, be notified of the reasons upon which the denial rests. Otherwise, appellant, not being advised of the actual reason for the denial, must show that as to each and every one of the possible bases for denial of

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[1]As to continuity of service, the order of February 3, 1945, contains general statements or findings to the effect that (1) the "Applicant and its predecessors have, since prior to June 1, 1935, held themselves out to transport over the claimed regular routes any kind of freight suitable for their equipment, by means of solicitation by letter, telephone, and telegraph, and by personal calls on shippers and receivers of freight throughout the general territory here considered," and (2) that the routes between the termini—such as between New York or Chicago and Kansas City—were continuously operated. Such findings contained in the order itself establish the fact that at all times both before and after the critical date, service was continuously available, and shipments were at all times solicited at the great majority of the intermediate or off-route points to which future service is denied by the order. In many other orders the Commission has held that under such a showing as to service specific evidence as to actual shipments received or delivered at intermediate points is unnecessary and the certificate to be issued covering the route and the termini will not be restricted to deny service at the intermediate points. See *John Richards, Common Carrier Application*, 27 M. C. C. 489; *Trans-American Freight Lines, Inc., Common Carrier Application*, 28 M. C. C. 493; *Spector Motor Service, Inc., Common Carrier Application*, 32 M. C. C. 443; *M. F. Nevitt, Common Carrier Application*, 4 M. C. C. 298.

rights, the Commission not only erred in its holdings but that the order upon every *conceivable* basis was entirely without substantial evidentiary support. Such a requirement places an unfair, in fact, an impossible, burden upon one who seeks review of an administrative order.

In order that the Commission's conceded disregard of evidence may be clarified there is attached hereto and made a part hereof, excerpts from an exhibit prepared by appellant and introduced in the district court. These excerpts, marked Appendix "A," clearly demonstrate the wholesale manner in which the Commission ignored pertinent evidence in the record before it. As to a particular denied point, this exhibit is designed to show, first, the Commission holding with regard to the denied point, second, a tabulation of the shipments disclosed by the evidence to have been carried to and from this point, and third, the shipments which were disregarded by the Commission and which are not contained in the initial or preliminary findings of fact. Similar disclosures to those attached were made to the court with respect to a total of some 69 major intermediate and off-route points denied to appellant by the Commission. In this manner, appellant demonstrated to the district court that the Commission had ignored substantial amounts of evidence which were derived from exactly the same source as the evidence considered by the Commission.

It cannot be claimed that these omissions of evidence were trifling or insignificant. In the case of Hartford, Connecticut, the Commission failed to consider over 58% of all the shipments shown in the record. With respect to Bayonne, New Jersey, the error is in excess of 32% of all shipments shown, and in Niagara Falls, New York, over 29% of all shipments were ignored. The evidentiary findings omit over 39% of all shipments prior to 1938 in the case of Camden, New Jersey. The other points contain

errors proportionately as great.[2] It was upon this erroneous and inaccurate basis that the ultimate findings were made denying appellant authority to operate.

Although this exhibit was introduced in the district court and both appellants and appellees devoted considerable portions of their arguments and briefs to a discussion of its disclosures, one can closely search the opinion of the district court without finding a single reference to the fact that the Commission admittedly ignored large amounts of evidence. The district court merely quotes extensively from the orders challenged and concludes that seemingly the Commission had considered all the evidence. Appellant respectfully submits that the district court plainly failed to review the whole record and refused to adhere to the required standards of judicial review. The motions to affirm do not in any way meet this issue.

One other point raised by appellees' motions may be dealt with quickly. Appellees the United States and the Interstate Commerce Commission attempt, by way of a footnote reference and by appending to their motion portions of an opinion in a companion case not involved in this appeal, to imply that appellant did not specifically bring to the Commission's attention in its petition for reconsideration all the points raised in this proceeding. As to this, it is sufficient to state that appellant did adequately present its claims of error to the Commission many times, as recognized by the district court.

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[2]It should be noted that all the shipments of record, including both those recognized and those ignored by the Commission, were derived from the same exhibits in evidence before the Commission. Moreover, it should be kept in mind that these shipments were stated to be representative only, consisting of approximately 5% of the total shipments actually available as proof.

II.

Appellees' Motions to Affirm Were Not Timely Filed.

Appellant feels itself compelled to direct the court's attention to the fact that neither the motion to affirm of appellees the United States and the Interstate Commerce Commission nor the similar motions of the intervenors were filed in the district court within the time required. Rule 12, Paragraph 3 of the Revised Rules of the Supreme Court of the United States permits appellees to file a motion to affirm with the clerk of the court possessed of the record provided this is done within fifteen days after service upon appellees of the papers required by Rule 12, Paragraph 2. Appellant personally served appellees the United States and Interstate Commerce Commission with the order allowing appeal, the jurisdictional statement and other required papers on November 27, 1951, by delivering these papers to them or their agents at their offices in Kansas City, Missouri. The service of the papers as to the intervenors was by mail on the same day.

Therefore, under Rule 12, Paragraph 3, appellees had until December 12, 1951, in which to file their motion with the clerk for the district court in the Western District of Missouri, Western Division, inasmuch as this Court still possesses the record. However, although the motion was mailed on December 12, 1951, it was not filed with the clerk until December 13, 1951. This was without the time permitted and appellant respectfully submits that the court's ruling upon appellant's jurisdictional statement should be without reference to the appellees' motion to affirm.

Conclusion.

In view of the fact that appellees' motions to affirm were not timely filed, erroneously attempt to reduce the issues presented by this appeal to a simple, single issue and wholly fail to meet or detract from the substantial and important nature of the questions presented, appellant respectfully submits that said motions should be overruled.

Respectfully submitted,

JOHN B. GAGE,
WENDELL BERGE,
A. ALVIS LAYNE, JR.,
Attorneys for Appellant
Riss & Company, Inc.

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Appendix A (cont'd)

Route	Point Denied	Finding of Commission
6	Sioux City, Ia.	No shipments were transported to or from this point prior to June 1, 1935. Six shipments were carried to or from such point during the interim period. Thereafter 5 shipments were handled to or from this point in Nov. 1936, and four (4) in Dec. 1936. Applicant transported 4 shipments in 1938 and 4 in 1939 to or from Sioux City, and none thereafter.

Shipments Shown in Record

Pro.No.	Date	Commodity	Point	Record Ref. Exh.	Record Ref. Page
18974	6/13/35	Butter	N.Y.C.	63	289
18975	6/14/35	Butter	N.Y.C.	"	289
26042	8/6/35	Sewing Machine	Cleveland, Ohio	"	289
26260	8/29/35	Iron Dampers	"	"	289
30617	9/5/35	Liquor	N.Y.C.	"	289
25582	9/11/35	Toys	Chicago, Ill.	"	289
24540	9/30/35	Velocipedes	Cleveland, Ohio	"	289
31754	10/2/35	Liquor	N.Y.C.	"	289
33932	10/4/35	Envelopes	Chicago, Ill.	"	289
20918	11/11/36	PNP	"	"	289
20917	11/11/36	WHEAT	"	"	289
20916	11/11/36	"	"	"	289
20915	11/11/36	"	"	"	289
20914	11/11/36	"	"	"	289
20944	12/1/36	Cocoanut	"	"	289
97078	12/1/36	Mdse.	"	"	289
20952	12/4/36	PNP	"	"	289
98669	12/21/36	Mdse.	"	"	289
85570	1/19/37	Mdse.	"	"	289
54898	5/28/37	Polish	"	"	289

Shipments Not Considered by the Commission

No.	Commodity	Dates
5	Order states 6 shipments from Sioux City during interim. There were 9.	
1	Mdse.	1/19/37
1	Polish	5/28/37
5	Total	

Appendix A (cont'd)

Route	Point Denied	Finding of Commission
6	Sioux City, Ia.	

Shipments Shown in Record					Record Ref.	
Pro.No.	Date	Commodity	Point		Exh.	Page
17338	11/2/37	Fruit	Chicago, Ill.		[illegible]	289
18584	11/19/37	Cereal	"		"	289
57336	5/20/38	Vege-tables	N.Y.C.		"	289
57422	5/23/38	Candy	"		"	289
23348	9/13/38	Maga-zines	Chicago, Ill.		"	
23315	9/13/38	"	"		"	289
161060	1/26/39	Granite	K.C., Mo.		"	289
15647	2/2/39	Glue	E.Chicago, Ind.		[illegible]	289
19910	3/9/39	Cato-logues	Chicago, Ill.		"	289
171794	7/24/39	[illegible]	Jersey City, N.J.		"	289

Shipments Not Considered by the Commission		
No.	Commodity	Dates
5 (cont'd)		
1	Fruit	11/2/37
1	Cereal	11/19/37
[illegible]	Total	

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Appendix A (Con't'd)

e	Point Denied	Finding of Commission	Shipments Shown in Record				Record Exh.	Ref. Page	Shipments Not Considered By the Commission		
			Pro.No.	Date	Commodity	Point			No.	Commodity	Date
Route A	Camden, N. J.	In the interim period, applicant transported one shipment of poultry from Omaha, one of trunks from Chicago, one each of dampers and drugs from Cleveland, and one of poultry from Sedalia, to Camden. On October 21, 1936, a shipment of poultry was handled from Kansas City to Camden. In 1937, applicant carried 13 shipments of 7 different commodities from Chicago to Camden, seven of soap from Camden to Omaha, and one shipment each of books and pencil sharpeners from Camden to Kansas City. In 1938 through 1941, a fairly substantial number of shipments of various commodities were transported between Camden and several points on applicant's routes, principal of which are Chicago, St. Louis, Pittsburgh, Cleveland, Cincinnati, Indianapolis, and St. Louis. No shipments are shown prior to June 1, 1935, or in 1936.	1748	10/1/34	Poultry	F.Kansas City, Mo.	48	36	7	Poultry	10/1/34.
			2362	10/30/34	"	"	48	36			10/30/34.
			2376	10/31/34	"	"	48	36			10/31/34.
			3600	12/15/34	"	"	48	36			12/15/34.
			3601	12/15/34	"	"	48	36			12/15/34.
			19445	6/21/35	"	F. Omaha, Nebr.	63	195			6/26/36.
			32207	6/26/35	Trunks	F. Chicago,Ill.	63	23			10/10/36
			26008	8/2/35	Iron Damper	F. Cleve.,Ohio	63	215	11	Miscellaneous Commodities	1937
			29760	8/8/35	Poultry	F.Sedalia,Mo.	63	214	18	Total	Impossible to designate exact shipments not considered by Commission because of generality of statement.
			24621	10/9/35	Drugs	F.Cleve.,Ohio	63	67			
			385	10/21/35	Poultry	F. K.C.,Mo.	63	112			
			16814	8/26/36	Poultry	"	48	36			
			20825	10/10/36	Machine	F.Omaha,Nebr.	35	1			
			61591	1/2/37	Soap	Omaha,Nebr.	63	214			
			53090	2/12/37	Poultry	F. K.C.,Mo.	48	36			
			61722	3/24/37	Grease	Evansville	63	215			
			53239	5/3/37	Poultry	F. K.C.,Mo.	48	36			
			66907	5/4/37	Candy	F. Chicago	63	215			
			64212	6/1/37	Books	K.C., Mo.	63	215			
			66600	6/8/37	Springs	F. Chicago	63	215			
			64239	6/22/37	Books	K.C.,Mo.	63	215			
			55770	6/23/37	Notions	F. Chicago	63	215			
			85869	7/1/37	Springs	"	63	215			
			23114	7/9/37	Springs	"	63	215			
			12091	8/20/37	Pipes	"	63	215			
			12220	8/23/37	Pipes	"	63	215			
			64365	8/27/37	Soap	Omaha	63	215			

N.B. In 1938 through 1941, a fairly substantial number of shipments of various commodities were transported between Camden and several points on applicants routes, principal of which are Chicago, St. Louis, Pittsburgh, Cleveland, Cincinnati, Indianapolis, and St. Louis. The shipments between 1938 and 1941 agree with the record.

Appendix A (Cont'd)

Route	Point Denied
Off Route 10-A (Cont'd)	Camden, N. J.

Shipments Shown in Record				Record Ref.	
Pro. No.	Date	Commodity	Point	Exh.	Page
64376	9/1/37	Books	K.C.,Mo.	63	215
64379	9/1/37	Soap	Omaha	63	215
30393	9/4/37	Poultry	F. K.C.,Mo.	48	36
14163	9/22/37	Relish	F. Chicago	63	215
15519	10/7/37	Books	"	63	215
61466	10/21/37	Soap	Omaha, Nebr.	63	215
61489	11/1/37	"	"	63	215
61501	11/17/37	"	"	63	215
18548	11/18/37	Liquor	F. Chicago	63	216
11547	11/18/37	"	"	63	216
18682	11/20/37	"	"	63	216
18549	11/23/37	"	"	63	216
19233	12/1/37	Pipe	"	63	216
61523	12/6/37	Soap	Omaha, Nebr.	63	216
19688	12/7/37	Liquor	F. Chicago	63	216
20204	12/17/37	Iron	"	63	216
20342	12/20/37	Liquor	"	63	216
61581	12/28/37	Soap	Omaha	63	216
61583	12/29/37	Pencil Sharpeners	K.C.,Mo.	63	216

Appendix A (Cont'd)

ite	Point Denied	Finding of Commission	Shipments Shown in Record				Record Ref.		Shipments Not Considered by Commission		
			Pro. No.	Date	Commodity	Point	Exh.	Page	No.	Commodity	Dates
ite 14	Hartford, Conn.	One shipment of poultry from Omaha prior to the statutory date, and one of liquor from Chicago in the interim period were transported to Hartford. No further shipments were handled until May 1937. Shipments as follows were also transported to Hartford; one shipment of butter from Omaha in 1937 and one in 1938, one of liquor from Schenley in 1939 and two in 1940; two of glass from St. Louis in 1939; one of oil from Cleveland in 1940, and one of oil from Nickliffe, Ohio, in each of 1940 and 1941. Applicant carried one shipment of liquor from Hartford to Chicago in 1937.	10689	5/10/35	Butter	F.Guthrie,Okla.	37	6	2	Glass	3/5/40
			18253	5/31/35	"	" " "	"	"			3/5/40
			18729	6/8/35	"	F.K.C., Mo.	"	"	1	Liquor	5/31/40
			19396	6/29/35	Poultry	F. Omaha, Neb.	41	2	1	Generators	12/30/40
			19801	6/29/35	"	" " "	"	"	1	Fans	6/4/41
			19891	6/29/35	"	" " "	63	5	1	Wire Glass	3/29/39
			32945	10/1/35	Liquor	F. Chic. Ill.	"	5	10	Butter	5/10/35
			24061	10/6/35	Butter	F. K.C., Mo.	37	6			5/31/35
			13526	2/15/36	Butter	" " "	"	6			6/8/35
			81924	5/19/37	Liquor	To Chic. Ill.	63	7			10/6/35
			22942	9/11/37	Butter	F. Omaha, Neb.	63	7			2/15/36
			22026	8/4/38	Butter	F. Omaha, Neb.	41	2			8/4/38
			22027	"	"	" " "	"	"			"
			22028	"	"	" " "	"	"			"
			22071	9/18/38	"	" " "	"	"			9/18/38
			22042	9/11/38	"	" " "	"	"			9/11/38
			22927	8/4/38	"	" " "	63	8	2	Poultry	6/29/35
			91436	1/20/39	Glass	F.St. Louis,Mo.	63	8			
			93993	3/29/39	Wire Glass	" " " "	63	8	18	Total	
			31203	10/21/39	Liquor	F.Schenley,Pa.	63	9			
			57245	12/1/39	"	" " "	63	9			
			186582	5/3/40	Glass	F. St.Louis, Mo.	63	10			
			186581	5/3/40	"	" " "	63	10			
			406202	5/23/40	Oil	F. Nickliffe, O.	63	11			
			5214	5/31/40	Liquor	F.Schenley, Pa.	63	11			

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Appendix A (Cont'd)

Route	Point Denied	Finding of Commission	Shipments Shown in Record				Record Ref.	
			Pro. No.	Date	Commodity	Point	Exh.	Page
Route 14 Cont'd)	Hartford, Conn.		5360	6/21/40	Liquor	F.Schenley, Pa.	G3	11
			6390	6/26/40	"	" " "	"	"
			409169	7/9/40	Oil	F.Cleveland,O.	"	12
			75259	12/30/40	Generators	F.St.Louis, Mo.	"	14
			15224	3/20/41	Oil	F.Wickliffe, O.	"	15
			88288	6/4/41	Buns	F. Cleveland, O.	"	16

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APPENDIX A (Cont'd)

Point Denied	Finding of Commission	Shipments Shown in Record						Shipments Not Considered By the Commission		
		Pro.No.	Date	Point	Commodity	Record Exh.	Ref. Page	No.	Commodity	Date
Worcester, Mass.	No shipments were carried to or from this point prior to December 1935, when one shipment of an unspecified commodity was transported from New York City. In 1936, applicant moved one shipment of can openers from Chicago, and one of merchandise from New York City, to Worcester. In 1937 a shipment of poultry from Atchison to Worcester and in 1938 one of paper from Worcester to Kansas City were handled. a few shipments of certain commodities were transported from Chicago, Cleveland, Indianapolis, and Cincinnati to Worcester, and from Worcester to Kansas City and Chicago, in 1939 and 1940.	16154	4/24/35	Fr.KC-Mo.	Butter	37	6	1	Butter	4/24/35
		17363	5/14/35	Fr.Guthrie Okla.	"	"	"	1	"	5/14/35
		17435	5/16/35	Fr.KC-Mo.	"	"	"	1	"	5/16/35
		18135	5/31/35	Fr.Guthrie Okla.	"	"	"	1	"	5/31/35
		4567	12/26/35	Fr. NYC	-	63	7	1	Cartons	7/17/36
		45612	6/12/36	Fr.Chic. Ill.	Can Openers	63	7	1	Eggs	11/16/37
		40135	6/30/36	Fr.NYC	Mdse.	"	"	1	Liquors	12/11/39
		8586	7/17/36	Fr.KC- o.	Cartons	37	6	1	-	4/11/40
		65271	7/13/37	Fr.Atchison,Kan.	Poultry	63	7	1	Shoes	12/17/40
		30987	11/16/37	Fr.KC-Mo.	Eggs	37	6	1	Wall Paper	2/28/41
		27537	8/25/38	To KC-Mo.	Paper	63	8	1	Shoes	3/1/41
		144670	7/13/39	" "	Wall Paper	"	"	1	Machinery	4/21/41
		144702	8/11/39	" "	" "	"	"	1	Shoes	6/3/41
		144710	8/16/39	" "	" "	"	"	1	St.Wire Springs	7/22/41
		196451	7/28/39	Fr.Chgo	Butter	"	"	1	" "	7/24/41
		196450	"	"	"	"	"	1	" "	8/5/41
		196583	8/12/39	"	Poultry	"	"	1	Machinery	11/7/41
		33860	9/1/39	Fr.Cleve	Filing Cards	"	"			
		57463	12/11/39	Fr.Mannor	Liquors	"	9	17	TOTAL NOT CONSIDERED BY COMMISSION	
		227253	1/6/40	Fr.Chgo.	Butter	"	"			
		168579	1/22/40	Fr.Ind.Ind.	Dresses	"	"			
		229959	1/30/40	Fr.Chgo.	Auto Reg.	"	10			
		230727	2/5/40	"	"	"	"			
		232855	2/22/40	"	"	"	"			

N.B. Commission says - "No shipments were carried to or from this point prior to December 1935..." There were 4 shipments in 1935 prior to December as shown above.

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APPENDIX A (Contd.)

oute	Point Denied	Shipments Shown in Record						Shipments Shown in Record					
						Record Ref.						Record Ref.	
		Pro.No.	Date	Point	Commodity	Exh.	Page	Pro.No.	Date	Point	Commodity	Exh.	Page
4	Worcester, Mass. (contd.)	231678	2/13/40	Fr.Chgo.Ill.	Eggs	63	10	268513	10/31/40	Fr.Chgo.	Fluid	63	13
		169060	2/15/40	Fr.Ind.Ind.	Grinder	"	"	272322	11/26/40	Fr.Chgo.	Auto Grills	"	14
		401549	3/11/40	Fr.Cleveland	RubberBumpts	"	"	419479	12/5/40	Fr.Cleve.O.	Envelopes	"	"
		144576	3/13/40	To K.C. Mo.	Wall Paper	"	"	622810	12/5/40	To KC-Mo.	Wall Paper	"	"
		240832	3/29/40	Fr.Chgo.	Poultry	"	"	274332	12/9/40	"	"	"	"
		500034	3/30/41	Fr.Ind.Ind.	Racks	"	"	622976	12/17/40	To Louisville Ky.	Shoes	"	"
		241445	4/5/40	Fr.Chgo.	Fiberboards	"	11						
		188025	4/11/40	Fr.St.Louis		"	"	624019	2/28/41	To KC-Mo.	Wall Paper	"	15
		404639	4/30/40	Fr.Cleveland	Mlded Milk	"	"	624024	3/1/41	To Louville,Ky.	Shoes	"	"
		405543	5/14/40	"	Heaters	"	"	4730	4/21/41	To Sandusky,O.	Machinery	"	16
		406238	5/23/40	"	Ven.Blinds	"	"	5697	6/3/41	To Louville,Ky.	Shoes	"	"
		408730	6/20/40	"	"	"	"	76682	7/22/41	To Chicago	St.Wire Sprgs.	"	17
		411229	8/16/40	"	"	"	"	76741	7/24/41	"	"	"	"
		501741	5/29/40	Fr.Ind.Ind.	Adv.Matter	"	"	76918	8/5/41	"	"	"	"
		249388	6/10/40	Fr.Chicago	Oil	"	"	21197	11/7/41	To Cleve.O.	Machinery	"	"
		612229	6/14/40	Fr.Cinci.O.	Steel	"	"						
		620702	6/18/40	To Chgo.	Auto Grills	"	"						
		620835	7/3/40	To KC-Mo.	-	"	12						
		409050	7/6/40	"	Wall Paper	"	"						
		409274	7/10/40	Fr.Cleve.O.	Gears	"	"						
		410130	7/25/40	"	Oil	"	"						
		522912	9/24/40	Fr.St.Louis	Zinc	"	13						
		414351	9/26/40	Fr.Cleve.O.	Machinery	"	13						
		265515	10/10/40	Fr.Cleve.O.	Steel	"	"						
		416848	10/30/40	"	Ven.Blinds	"	"						
		416816	10/30/40	"	Faucets	"	"						